

SERVED: December 8, 1998

NTSB Order No. EA-4730

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of December, 1998

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15295
v.)	
)	
L. MICHAEL WILLIFORD,)	
)	
Respondent.)	
_____)	

ORDER DENYING RECONSIDERATION

By NTSB Order No. EA-4700, served September 4, 1998, the Board granted the Administrator's motion to dismiss the appeal filed in this case as untimely. In a petition filed October 3, 1998, respondent, by counsel, requests that we reconsider that dismissal, arguing, in effect, that he should not be held to have filed his brief on the date FedEx picked it up (three days after respondent says he dropped it off) because the drop box where he deposited the brief had no posted pickup time.¹ The petition will be dismissed.

¹Since respondent enclosed a picture of the outside of a drop box, we assume he is representing only that the exterior of the box had no posted pickup times. He does not indicate whether any effort was made to look inside the door of the box, where, much like a Postal Service mail box, collection times are sometimes posted.

As the Administrator correctly points out in her opposition to the petition, reconsideration is not available in an emergency case absent a showing of new matter that could not have been found and presented before the case was originally submitted.² The respondent's petition contains no such showing. Rather, it simply identifies information of which he was, or should have been, aware when he filed an answer to the Administrator's motion to dismiss his appeal for his brief's lateness, but whose significance, at that time, may not have been appreciated. Such information is not new matter within the meaning of our rule.³

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's petition for reconsideration is dismissed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

²Section 821.57(d) provides as follows:

§ Procedure on appeal.

* * * * *

(d) *Petitions for reconsideration, rehearing, reargument, or modification of order.* The only petitions for reconsideration, rehearing, reargument, or modification of an order which the Board will entertain are petitions based on the ground that new matter has been discovered. Such petitions must set forth the following:

- (1) The new matter;
- (2) Affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation, is unavailable; and
- (3) A statement that such new matter could not have been discovered by the exercise of due diligence prior to the date the case was submitted to the Board.

³We are nevertheless constrained to observe that if respondent deposited his brief in a Federal Express box without obtaining reliable information as to whether it would be picked up that day, a conclusion that he had not served the brief in a manner that ensured overnight delivery would be unavoidable.